

**Letter of Findings: 02-20160260P
Corporate Income Tax
For the Year 2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Negligence/late filing penalty and interest were improperly assessed because Indiana business was granted an extension on the filing of its short period return and made payment on the extension in a timely manner.

ISSUES

I. Tax Administration–Negligence/Late Filing Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-5-1; IC § 6-3-4-3; IC § 6-3-4-5; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 15-11-2](#); P.L. 172-2011, Sec. 58; Treas. Reg. § 1.1502-76.

Taxpayer requests that the Department abate the negligence/late filing penalty.

II. Tax Administration-Interest.

Authority: IC § 6-8.1-10-1; 6-8.1-6-1; [45 IAC 15-6-1](#)

Taxpayer protests the imposition of interest on its tax liability.

STATEMENT OF FACTS

In tax year 2014, Taxpayer was doing business in Indiana. Taxpayer filed on a fiscal year basis with a year end of February 28, 2014. On June 1, 2014, Taxpayer was purchased by a company which has a calendar year end ("Parent Company"). As a result of the acquisition, Taxpayer became an affiliated member of the federal consolidated income tax return of Parent Company. Taxpayer was thus required to file a short year return for the tax period March 1, 2014, through May 31, 2014. Taxpayer filed a federal extension for the short period on March 15, 2015. The Indiana extension was filed April 15, 2015, along with an extension payment of \$25,000.

On November 10, 2015, the Indiana Department of Revenue ("Department") issued Taxpayer a notice which assessed interest and penalties for late filing. Taxpayer filed a protest on November 24, 2015, stating that the short period return was timely filed and requesting that the late filing penalty and interest be removed.

A hearing was held July 18, 2016, which Taxpayer did not attend. Subsequently, Taxpayer requested a rehearing which was held by phone on July 28, 2016, in which Taxpayer explained the basis of its requests. This Letter of Findings results. Additional facts will be supplied as necessary.

I. Tax Administration–Negligence/Late Filing Penalty.

DISCUSSION

The Department imposed a ten percent negligence/late filing penalty for the short period return filed by Taxpayer. Taxpayer argues that the short period return was filed timely and it should not be subject to the penalty and requests an abatement.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Under Treas. Reg. § 1.1502-76(a), a group's consolidated return must be filed based on the common parent's taxable year and each subsidiary must adopt the common parent's annual accounting period. Because Taxpayer's last separate federal return was for the tax period ended February 28, 2014, and Taxpayer was not acquired until June 1, 2014, Taxpayer must file a short period return for March 1, 2014, to May 31, 2014, to account for that time Taxpayer was not affiliated with Parent Company.

Following § 1.1502-76(c), if a consolidated group files its return "on or before the due date for the filing of a subsidiary's separate return . . . then the separate return for any portion of the subsidiary's taxable year for which its income is not included in the consolidated return . . . must be filed no later than the due date of such consolidated return." Parent Company is a calendar year filer. Thus, its 2014 federal consolidated return or extension request must have been filed by March 15, 2015. According to Taxpayer, its federal extension for the short period was timely filed by April 15, 2015.

As it pertains to the filing of the short period return in Indiana, IC § 6-3-4-3 dictates that the return be filed no later than:

- (1) The 15th date of the fourth month following the close of the taxable year.
- (2) For a corporation whose federal tax return is due on or after the date set forth in subdivision (1), as determined without regard to any extensions, weekends, or holidays, the 15th of the month following the due date of the federal tax return.

Prior to January 1, 2012, IC § 6-3-4-3 contained only the first subsection instructing that returns be filed on or before the 15th day of the fourth month following the close of the taxable year. However, effective January 1, 2012, the Code was amended to incorporate subsection (2). (P.L. 172-2011, Sec. 58). Therefore this Letter of Findings applies a change in the law.

In interpreting the current version of IC § 6-3-4-3(1) Taxpayer notes and the Department agrees, that the due date of the short period return would have been September 15, 2014. However, under newly added subsection (2), the consolidated Parent Company federal return was due March 15, 2015, which was after September 15, 2014. Thus, Taxpayer's short period return was due on "the 15th of the month following the due date of the federal tax return," or April 15, 2015. The tax payable on the short year return was also due when the filing was due under IC § 6-3-4-5.

Taxpayer filed an extension for its short period return on April 15, 2015, and made an extension payment at the same time. Under the current version of IC § 6-3-4-3, the filing and payment were timely. Thus, the late filing penalty does not apply.

FINDING

Taxpayer's protest of the negligence/late filing penalty is sustained.

II. Tax Administration–Interest.

DISCUSSION

Taxpayer protests the imposition of interest. Under IC § 6-8.1-10-1, interest is due on an unpaid tax liability if the liability is paid after the due date for the return.

Taxpayer was granted an extension on the filing of their federal short period return. Under IC § 6-8.1-6-1(c)(1), this resulted in an automatic extension for the filing of Taxpayer's Indiana return:

If the Internal Revenue Service allows a person an extension on the person's federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days.

Though the filing of the Indiana short period return was granted an extension, payment of tax due must be made by the original filing date. [45 IAC 15-6-1](#). As determined above, the original filing date of the short period return was April 15, 2015. By that date, Taxpayer must have made "a payment of at least ninety percent (90[percent]) of the tax reasonably expected to be due on the due date or at least one hundred percent (100[percent]) of the immediate prior year total tax liability." [45 IAC 15-6-1\(a\)\(2\)](#). If Taxpayer fails to do this, it is "liable for the statutory interest for any tax that remains unpaid during the extension period." [45 IAC 15-6-1\(d\)](#).

Taxpayer made a payment of \$25,000 to the Department on April 15, 2015. According to the short period Indiana return eventually filed on September 14, 2015, Taxpayer's actual tax due was \$22,719, thus Taxpayer's extension payment was sufficient and should not have been subject to interest.

FINDING

Taxpayer's protest of interest is sustained.

SUMMARY

Taxpayer's extension request for the filing of its short period return was timely, and its extension payment was sufficient. Thus, penalty and interest were incorrectly assessed.

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An [html](#) version of this document.